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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

SHANEL STASZ, Plaintiff and Appellant, v. ALBERT NEJAT, et al., Defendants and Respondents.	B226679 (Los Angeles County Super. Ct. No. BC423745)

APPEALS from judgments and orders of the Superior Court of Los Angeles County, Luis A. Lavin, Judge. Affirmed.

Shanel Stasz, in pro per.

Horvitz & Levy, David M. Axwlrad, Karen M. Bray; Caldwell, Leslie & Proctor, and Robyn C. Crowther for Defendants and Respondents Sue Banas, Nickolas Boskovich, Trent Hawkins, Jennifer Kaiser, Melissa Kent, Merle Kent, Victoria Larimore, Fern Liberson, Richard Mauerhan, Karnit Mouchly, Albert Nejat, Robert Pavloff, Ivy Skoff, Jennifer Worman, and Park Wellington Owners' Association.

K&L Gates, for Defendants and Respondents K&L Gates, Richard P. Crane, Suzanne Henry, and Ronald W. Stevens.

Cheong, Denove, Rowell & Bennett and John D. Rowell for Defendants and Respondents Wilkie Cheong, William M. Karns, and Cheong, Denove, Rowell & Bennett.

INTRODUCTION

Shanel Stasz appeals from: (1) an order granting the special motions to strike under Code of Civil Procedure section 425.16 of attorneys Richard P. Crane, Suzanne Henry, and Ronald W. Stevens, and the law firm of K&L Gates (the K&L Defendants), and of attorneys Wilkie Cheong and William M. Karns, and the law firm of Cheong, Denove, Rowell & Bennett (the CDRB Defendants); (2) an order granting the special motion to strike and the demurrers of the Park Wellington Owners' Association (Association or PWOA), of Melissa Kent, Albert Nejat, and Jennifer Worman (referred to as the Voting Defendants), of Sue Banas, Trent Hawkins, and Robert Pavloff (the Non-Voting Defendants), of Jennifer Kaiser, Victoria Larrimore, Fern Liberson, Richard Mauerhan, Karnit Mouchly, and Ivy Skoff (the Resident Defendants), and of Nicholas Boskovich and Merle Kent (the Non-Resident Defendants); and (3) an order granting an ex parte application of the nonattorney, nonlaw firm defendants, and a judgment dismissing the claims against them with prejudice.[1] Finding no reversible error, we affirm.

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[1] All further section citations are to the Code of Civil Procedure, unless otherwise indicated.

FACTUAL AND PROCEDURAL HISTORY

A. *Misappropriation Action*

The instant lawsuit stems from prior litigation which is now final. In 2007, the PWOA filed a complaint seeking to remove Stasz from the PWOA Board of Directors (Board) and requesting an accounting from Stasz. Although Stasz had been elected to serve on the Board beginning in 2002, she had failed to notify the Association that she had transferred her ownership interest in her unit to a trust on July 10, 2001. Under the Association's governing documents (the covenants, conditions, and restrictions (CC&Rs) and the by-laws), the transfer to the trust disqualified Stasz from serving as a board member or officer. On October 15, 2007, the superior court issued a temporary restraining order prohibiting Stasz from using the Association's credit card, issuing Association checks, and removing or destroying Association documents or computer data. The following month the court issued a preliminary injunction, prohibiting Stasz from holding herself out as an officer or director of the Association, and ordered the election of a new board.

In February 2008, Stasz's previously retained counsel, Kulik, Gottesman, Mouton & Siegel (Kulik), appeared before the Board and requested approximately $35,000 in fees it had incurred representing Stasz. The Board voted to deny the request.[2] In May 2008, the Kulik firm withdrew from representing Stasz when she failed to pay their fees. Stasz thereafter continued to represent herself for over a year.[3]

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[2] Melissa Kent, who had been elected to the new Board, recused herself from the vote.

[3] Stasz is a law school graduate who has represented herself in numerous lawsuits. (See, e.g., *Stasz v. Eisenberg* (2010) 190 Cal.App.4th 1032 [claims based upon her purported entitlement to property from the estate of Quackenbush]; *Stasz*

The PWOA's counsel was initially the K&L Defendants, and subsequently the CDRB Defendants. The complaint was amended to add misappropriation claims against Stasz, and the case proceeded to a bench trial on July 29, 2009. On the day of trial, Stasz asked the trial court for a continuance based on medical issues and her desire to substitute in counsel. When her request was denied, she left the courtroom and did not return. The court found that Stasz had misappropriated over $100,000 in Association funds. It further found that at the time she was doing so, she "was not entitled to hold [a position on the Board] as she was not the owner of a condominium in Park Wellington."

Stasz appealed the judgment, contending that the continuance should have been granted, that the trial court's findings were not supported by the facts, and that K&L attorney Stevens was improperly allowed to try the case with the CDRB counsel. The appellate court rejected the claims and affirmed the judgment. (See *Park Wellington Owners' Association v. Stasz* (June 21, 2011, B220411) [nonpub. opn.].)[4] That decision is now final.

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v. Schwab (2004) 121 Cal.App.4th 420; *Stasz v. Gonzalez* (Bankr. 9th Cir. Nov. 30, 2011, BAP No. CC-11-1050-HKiPa) 2011 Bankr. LEXIS 4834); *Stasz v. Gonzalez* (Bankr. 9th Cir. April 5, 2011, BAP No. CC-10-1145-PaDKi) 2011 Bankr. LEXIS 1786; *Stasz v. Gonzalez* (Bankr. 9th Cir. 2008) 387 B.R. 271; *In re Stasz* (Bankr. 9th Cir. Aug. 9, 2007, BAP No. CC-06-1380-BPaMa) 2007 Bankr. LEXIS 4830; *Stasz v. Quackenbush* (Bankr. 9th Cir. Feb. 28, 2007, BAP No. CC-06-1202-KMoD) 2007 Bankr. LEXIS 4917; *In re Stasz* (C.D. Cal. June 14, 2012, No. CV12-00732-PSG) 2012 U.S. Dist. LEXIS 83518; *In re Stasz* (Bankr. C.D. Cal. Jan. 14, 2011, No. 2:05-bk-43980-AA) 2011 Bankr. LEXIS 270.)

[4] California Rules of Court, rule 8.1115(b) provides that "[a]n unpublished opinion may be cited or relied on: [¶] (1) When the opinion is relevant under the doctrines of law of the case, res judicata, or collateral estoppel."

B. *First Amended Complaint*

On February 25, 2010, Stasz filed a first amended complaint (FAC) alleging six causes of action: (1) breach of fiduciary duty against the PWOA, the Voting Defendants, and the Non-Voting Defendants, (2) conspiracy to breach fiduciary duty against all defendants, (3) tortious interference with contractual duty against the K&L Defendants and the CDRB Defendants, (4) negligence against the PWOA, the Voting Defendants, and the Non-Voting Defendants, (5) intentional infliction of emotional distress against all defendants, and (6) fraud against all defendants.

In the FAC, Stasz alleged, "[u]pon information and belief," that "the PW[OA] through Stasz'[s] election in 2002 and 2005 as the President of the PW[OA] Board of Directors entered into a contract for Stasz to act on the PW[OA's] behalf and that they would maintain Director's insurance and[/]or provide legal counsel to any Board member or volunteer."[5] Stasz purported to attach a copy of a contract for legal services that she entered into with the Kulik firm, but the document attached was a waiver of conflicts letter, not a retainer agreement.

As to the K&L Defendants, Stasz alleged that they were liable because (1) K&L attorney Henry wrote a letter "purporting to have authority to represent the PW[OA] and to remove Stasz from the Board of Directors . . . since Stasz's condo at the [Park Wellington] was in trust"; (2) they filed various pleadings in the misappropriation action; (3) they held several PWOA homeowners' meetings where they repeated their assertions about Stasz; and (4) they held the elections for a new board pursuant to the court's order.

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[5] No written contract with such terms was attached to the FAC or produced in the course of the litigation.

As to the CDRB Defendants, Stasz alleged that they were liable because (1) they conspired with the K&L Defendants to have PWOA and the Voting Defendants pass a board resolution to pay the K&L Defendants for their work on the misappropriation action; (2) they contacted the PWOA's insurance carrier; (3) they sent a letter prior to trial to PW homeowners about the misappropriation action; and (4) they improperly allowed K&L attorney Stevens to assist them in trying the misappropriation action, even though the K&L Defendants had substituted out.

As to the Voting Defendants, Stasz alleged that they breached their duty to indemnify her by voting to deny the Kulik firm's request that the Association pay Stasz's legal fees and refusing to obtain new counsel for her. As to the remaining defendants, Stasz alleged that they attended the homeowners' meetings, and "regularly verbally and in writing back[ed] these illegal acts."

Finally, Stasz alleged that after the Kulik firm brought a lawsuit against the PWOA to recover their fees for representing Stasz, the lawsuit was "settled by payment from the PW[OA] via K & L and Stevens in October of 2009."

C. *Special Motions to Strike*

On May 3, 2010, the CDRB Defendants filed a special motion to strike the complaint against them as a strategic lawsuit against public participation (SLAPP) under section 425.16, also known as the anti-SLAPP statute. They contended that their allegedly wrongful acts -- advising their clients of their legal rights and prosecuting the misappropriation action -- fell within the scope of section 425.16 as protected petitioning activity. They also contended that Stasz's claims lacked merit. First, her entire case stemmed from "a false assumption that she was entitled to legal representation as a member of the Board." Second, they were not involved in any breach of duty to Stasz, as they were not retained by the

Association to prosecute the misappropriation action until May 2008, many months after Stasz had been removed as a board member and after the Association had denied the Kulik firm's request for payment. In addition, all of their allegedly wrongful acts were privileged under Civil Code section 47, as communicative acts made in connection with an ongoing judicial proceeding and made to achieve an objective of the litigation. Finally, they contended that the conspiracy cause of action failed as a matter of law because Stasz did not comply with Civil Code section 1714.10, which generally requires a plaintiff to obtain a court order before pleading a "cause of action against an attorney for a civil conspiracy with his or her client."

On May 10, 2010, the K&L Defendants filed a special motion to strike the complaint, based on substantially the same grounds raised by the CDRB Defendants. In support of their motion, the K&L Defendants attached copies of the PWOA's governing documents and copies of various pleadings in the misappropriation action. Nothing in the PWOA's governing documents provided that the Association would obtain or pay for legal representation of a board member accused by the Association of misappropriating its assets. In addition, the K&L Defendants noted, Stasz could have no contractual right to indemnification stemming from her status as an officer or board member because the trial court in the misappropriation action had determined that she was ineligible to serve on the Board. Finally, the K&L Defendants argued that the only potential statutory basis for indemnification of a director of a homeowners' association was Corporations Code section 7237, subdivision (c)(1) which prohibits indemnification of an agent found liable for misappropriation "unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that . . . such person is fairly and reasonably entitled to indemnity." Stasz did not

contend the trial court in the misappropriation action had made any such determination.[6]

The K&L Defendants further argued that Stasz had no valid claim for intentional infliction of emotional distress, as their allegedly wrongful conduct was not "'so extreme and outrageous "as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community."'" Finally, they argued that Stasz had not pleaded her fraud claim with particularity, because even assuming there were misrepresentations by defendants relating to her entitlement to indemnification, she had not, and could not, allege detrimental reliance on those misrepresentations.

The remaining defendants joined in the K&L Defendants' special motion to strike.

Stasz opposed the CDRB Defendants' special motion to strike, contending that her suit was not a SLAPP, as her complaint was "about legal representation owed to her, by the PW[O]A and breached or interfered with by all of the Defendants." She also argued that Civil Code section 47 did not apply, as she was not suing "any of the Defendants for their participation or any statements made during their legal representations but rather their acts that damaged Stasz." She did not elaborate on her assertion. Stasz insisted she was not required to show a likelihood of prevailing on the merits, as the defendants had failed to meet their initial burden of showing their acts fell within the scope of the anti-SLAPP statute.

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[6] In addition to noting the absence of any contractual or statutory basis for Stasz's claim of entitlement to legal fees, the K&L Defendants invoked Civil Code section 1668, which provides that contracts that "directly or indirectly . . . exempt[s] anyone from responsibility for his own fraud, or willful injury to the other person or property of another, or violation of law, whether willful or negligent, are against the policy of the law."

Finally, she contended that Civil Code section 1714.10 was inapplicable "since the acts alleged in her Complaint show that the attorney defendants went beyond the performance of a professional duty to serve the client and involve[d] a conspiracy to violate a legal duty in furtherance of the attorneys[']financial gain." She opposed the K&L Defendants' special motion to strike on substantially the same grounds.

D. *Demurrers*

On May 10, 2010, the PWOA and the Voting Defendants filed a demurrer to all causes of action against them, viz., the first, second, fourth, fifth, and sixth causes of action in the FAC.[7] They argued these claims should be dismissed because they had no duty to indemnify Stasz. They further noted that Melissa Kent had recused herself from the vote on paying Stasz's legal fees. They also argued that the claims for intentional infliction of emotional distress and fraud failed as a matter of law, because their alleged wrongful conduct was not sufficiently outrageous and Stasz did not plead detrimental reliance on any alleged misrepresentation.

The Non-Voting Defendants filed a demurrer to the same causes of action, on substantially the same grounds stated in the demurrer of the PWOA and the Voting Defendants. In addition, they argued that the causes of action failed for the "additional and independent reason that the Non[-]Voting Defendants were not on the PWOA Board at the time it denied Stasz's request for payment of her legal fees."

The Resident Defendants filed a demurrer to all causes of action against them, viz., the second, fifth, and sixth causes of action, on substantially the same

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[7] The third cause of action for tortious interference with contract was asserted against the attorney and law firm defendants only.

grounds as stated in the other two demurrers. Additionally, they asserted that they could not be liable because they had never served on the Board. They further argued that no legal or equitable principle required a homeowner to cover another homeowner's legal fees.

The two Non-Resident Defendants similarly demurred to the same causes of action on similar grounds. In addition, they noted that they could never have served as Board members, as Merle Kent, who died in January 2010, never lived in a unit at Park Wellington and Boskovich never owned a unit there.

Stasz filed oppositions to the demurrers; each opposition made the same arguments. Stasz contended that because the PWOA settled the Kulik firm's lawsuit with a monetary payment, the duty of the PWOA to Stasz for legal indemnification was established. In addition, she contended that because the allegations of her complaint were presumed to be true, it must be presumed that each defendant conspired with one another to harm her. Finally, she requested leave to amend, as there was a reasonable possibility that she could state a cause of action. Stasz did not explain how she could amend the complaint to remedy the deficiencies identified by respondents.

E. *Superior Court Rulings*

At a hearing on June 21, 2010, the superior court granted the special motions to strike of the CDRB Defendants and of the K&L Defendants. The court determined that the causes of action against the law firms and attorneys arose from "the prosecution of the [misappropriation action] and[/]or the provision of legal advice or statements made in connection with the lawsuit or anticipation of litigation." The burden thus shifted to the plaintiff to show she could prevail, but as she had presented no competent evidence on this point, the court granted the motions. The minute order on the matter was entered the same day.

At the June 21 hearing, the court also heard arguments on the joinder by the remaining defendants (the PWOA and the individuals) to the K&L Defendants' special motion to strike and on their demurrers. On June 22, 2010, the superior court issued its rulings and orders on the special motion to strike and the demurrers. The court granted the special motion to strike as to the fifth cause of action for intentional infliction of emotional distress, as "the gravamen of the claim relates to defendants' actions in the [misappropriation action]." As to the demurrers, the court sustained the demurrers to the first, second, and fourth causes of action, without leave to amend. The court stated that leave to amend was denied because "Plaintiff [was] not eligible for indemnification in this lawsuit pursuant to [Corporations] Code [section] 7237(c)(1) and/or was not owed a duty of care by any of the defendants with regard to providing her with counsel or paying for her counsel." As to the sixth cause of action for fraud, the court sustained the demurrer with leave to amend as to the PWOA and the Voting Defendants, but without leave to amend as to the remaining defendants.

On August 16, 2010, Stasz filed a notice of appeal from the June 21, 2010 minute order.

F. *Ex Parte Application to Dismiss Second Amended Complaint*

On July 2, 2010, Stasz filed a second amended complaint (SAC). The SAC was identical to the FAC, except that additional allegations and corrections were made to it. Specifically, the SAC stated the same six causes of actions against all of the original defendants, including the CDRB Defendants and the K&L Defendants. As to the sixth cause of action, Stasz amended the defendants named in the cause of action. She also added allegations that the PWOA and the Voting Defendants met with the K&L Defendants and the Kulik firm to discuss their bills in February 2008, that they decided to pay the K&L Defendants but not the Kulik

firm, and that in October 2009, they paid the Kulik firm an unstated amount of money.

On July 13, 2010, the Association and the individual defendants filed an ex parte application for the dismissal of all causes of action against them. They argued that the SAC "fail[ed] to comply with any of the rulings the Court made in the [June 22, 2010] Order. It continues to name as parties all of the defendants against whom all causes of action were stricken or dismissed. It repeats the causes of action that were previously and finally adjudicated. And instead of amending to allege any additional fact that might support a cause of action for fraud against *any* defendant, the SAC simply repeats the same factual allegations that were previously found to be insufficient to state any claim for relief." In support of the ex parte application, attorney Robyn C. Crowther filed a declaration, stating that on July 12, 2010, at approximately 10:00 a.m., she caused a letter to be hand delivered to Stasz's address of record, advising her that on the following day, counsel would appear in court on the ex parte application to request dismissal of all causes of action against the Association and the individual defendants. A copy of the letter was attached, along with a copy of a hand-delivered envelope postmarked July 12, 2010. She further stated that an employee of her office called Stasz twice prior to 10:00 a.m. the same day, and left voice messages both times to inform Stasz that the ex parte application was being filed.

The superior court entered a judgment of dismissal as to the PWOA and all individual defendants on July 13, 2010. On July 26, 2010, Stasz moved for reconsideration, arguing that she was improperly notified of the ex parte hearing and that her SAC complied with the court's order. The Association and the individual defendants opposed the motion, attaching a declaration by attorney Alison Mackenzie, who stated she called Stasz twice before 10:00 a.m. on July 12,

2010, and left voicemail messages to inform her about the ex parte application. The court's ruling on the motion for reconsideration is not in the appellate record. On September 10, 2010, Stasz filed another notice of appeal.[8]

DISCUSSION

A. *Special Motions to Strike*

Stasz appeals from the two orders (a) granting the law firm and attorney defendants' special motions to strike under section 425.16, and (b) partially granting the PWOA's and individual defendants' special motion to strike.[9] This court independently reviews those orders. (*Rusheen v. Cohen* (2006) 37 Cal.4th 1048, 1055.) We accept as true the evidence favorable to the plaintiff and evaluate the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law. (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 325 (*Flatley*).)

Under section 425.16, the court should grant a special motion to strike a cause of action if it (1) arises from protected speech or petitioning and (2) lacks even minimal merit. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 89.) The party bringing the special motion to strike has the initial burden of showing that the

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[8] Although the September 10 notice of appeal listed only the July 13, 2010 order and judgment of dismissal, the designation of the appellate record listed the June 22, 2010 order partially granting the special motion to strike and sustaining the demurrers of the Association and the individual defendants and the August 24, 2010 judgment dismissing the CDRB Defendants. Accordingly, we will exercise our discretion to construe the Notice of Appeal to include those orders and that judgment.

[9] As stated above, the PWOA and the individual defendants joined in the K&L Defendants' special motion to strike the causes of action against them, viz., the second, third, fifth and sixth causes of action. In ruling on the joinder, the superior court granted the special motion to strike only as to the fifth cause of action.

cause of action arises from protected speech or petitioning. (*Zamos v. Stroud* (2004) 32 Cal.4th 958, 965.) Once the moving party has met its burden, the burden shifts to the nonmoving party to demonstrate minimal merit, i.e., that there is a probability of prevailing on the cause of action. (*Ibid*.)

Here, the superior court determined that the CDRB Defendants and the K&L Defendants had met their burden of showing that the causes of action in the complaint against them (the second, third, fifth, and sixth) arose from protected petitioning activity. The court also determined that the remaining defendants had met their burden of showing that the fifth cause of action for intentional infliction of emotional distress arose from the same protected activity. We agree.

Section 425.16 protects "any act . . . in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue." (§ 425.16, subd. (b)(1).) Such acts include "any written or oral statement or writing made in connection with an issue under consideration or review by a . . . judicial body . . . ." (§ 425.16, subd. (e)(2).) Thus, "statements, writings and pleadings in connection with civil litigation are covered by [section 425.16], and that statute does not require any showing that the litigated matter concerns a matter of public interest. [Citations.]" *(Rohde v. Wolf* (2007) 154 Cal.App.4th 28, 35.) Moreover, "'communications preparatory to or in anticipation of the bringing of an action or other official proceeding are within the protection of the litigation privilege of Civil Code section 47, subdivision (b) [citation], [and] such statements are equally entitled to the benefits of section 425.16.' [Citations.]" (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1115.)

After independently reviewing the FAC, we conclude that the allegedly wrongful acts of the K&L Defendants and the CDRB Defendants were in

furtherance of the constitutional right to petition the courts, as the allegedly wrongful acts were preparatory communications (e.g., K&L attorney Henry's letter), the filing of court documents (e.g., filing the misappropriation action), or communications in connection with litigation (e.g., advising the PWOA to pay the K&L Defendants but not the Kulik firm for their work on the misappropriation action). In addition, the gravamen of the intentional infliction of emotional distress claim arose from protective petitioning activity, as Stasz claimed she suffered emotional distress because the defendants sued her and denied her legal representation in the misappropriation action. Thus, the gravamen of that cause of action is based upon protected petitioning activity.

On appeal, Stasz contends the defendants' acts were outside of the scope of section 425.16, as their acts were fraudulent or unlawful as a matter of law, citing *Flatley, supra*, 39 Cal.4th 299. In *Flatley*, the California Supreme Court held that "where a defendant brings a motion to strike under section 425.16 based on a claim that the plaintiff's action arises from activity by the defendant in furtherance of the defendant's exercise of protected speech or petition rights, but either the defendant concedes, or the evidence conclusively establishes, that the assertedly protected speech or petition activity was illegal as a matter of law, the defendant is precluded from using the anti-SLAPP statute to strike the plaintiff's action." (*Id*. at p. 320.) *Flatley* is inapposite here, because the defendants have not conceded that their conduct was fraudulent or unlawful, and the factual allegations in Stasz's complaint do not establish that the allegedly wrongful acts were fraudulent or unlawful as a matter of law. At best, the factual allegations show the defendants believed Stasz was not entitled to legal representation, based upon their interpretation of the PWOA's governing documents and applicable state law. Accordingly, this conduct fell well within that protected by the anti-SLAPP statute.

Stasz also contends the defendants' protected acts were incidental to her claims. She does not elaborate, but cites *Freeman v. Schack* (2007) 154 Cal.App.4th 719 and *Hylton v. Frank E. Rogozienski, Inc*. (2009) 177 Cal.App.4th 1264, cases which held that malpractice claims by former clients against their attorneys fell outside the scope of the anti-SLAPP statute. These cases provide no assistance to Stasz, as she did not assert claims of malpractice. Nor could she have done so: she was not the former client of either the K&L Defendants or the CDRB Defendants; the remaining defendants were not alleged to be lawyers, and thus she could assert no malpractice claim against them.

Because the moving defendants met their initial burden of showing that the causes of action in the complaint arose from protected activity, the burden shifted to Stasz to demonstrate a probability of prevailing on the merits of her claims. Both at the trial court level and on appeal, Stasz has declined to make such a showing. Accordingly, the superior court did not err in granting the special motions to strike.

B. *Demurrers*

Stasz also appeals from the June 22 order of the superior court sustaining the demurrers of the Association and the individual defendants without leave to amend to the first, second, and fourth cases of action, and sustaining the demurrers of the Non-Voting Defendants, the Resident Defendants, and the Non-Resident Defendants without leave to amend to the sixth cause of action for fraud. Where the trial court sustains a demurrer, this court reviews the complaint "de novo to determine whether it contains sufficient facts to state a cause of action." (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497 (*Hernandez*), citing *Hill v. Miller* (1966) 64 Cal.2d 757, 759.) "In doing so, we accept as true the properly pleaded material factual allegations of the complaint, together with

facts that may be properly judicially noticed. Reversible error exists only if facts were alleged showing entitlement to relief under any possible legal theory. [Citations.]" (*Hernandez, supra,* 49 Cal.App.4th at p. 1497.)

"[W]here the demurrer is sustained without leave to amend, [we] determine whether the trial court abused its discretion in doing so. [Citations.] On review of the trial court's refusal to grant leave to amend, we will only reverse for abuse of discretion if we determine there is a reasonable possibility the pleading can be cured by amendment. Otherwise, the trial court's decision will be affirmed for lack of abuse. [Citations.]" (*Hernandez, supra,* 49 Cal.App.4th at pp. 1497-1498.)

In reviewing the FAC, we conclude that all of the causes of action were based upon Stasz's claim that the PWOA had a duty to pay for her legal representation in the misappropriation action. Her factual allegations and the judicially noticed facts, however, demonstrate that she was not entitled to legal indemnification in the misappropriation action. As an initial matter, we note that we accept as true only "properly pleaded material factual allegations" in the FAC. (*Hernandez, supra*, 49 Cal.App.4th at p. 1497.) In the FAC, Stasz conclusorily alleged that her election as president of the PWOA created a contractual obligation on the part of the Board to provide her with legal representation. However, she produced no contract with these terms, and the PWOA's governing documents make no provision for payment for such representation. Moreover, the court in the misappropriation action found she was not eligible to serve as a PWOA officer or director. That factual determination was part of an order and judgment against her which has been affirmed on appeal and is now final. Thus, we need not accept that allegation as true.

Stasz has neither claimed a statutory entitlement to indemnification, nor disputed respondents' contention that subdivision (c)(1) of Corporations Code

section 7237 precludes such indemnification here. That statute prohibits legal indemnification of a director found liable for misappropriation of a corporation's assets "unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that . . . such person is fairly and reasonably entitled to indemnity for the expenses." (Corp. Code, § 7237, subd. (c)(1).)[10] Stasz does not claim to have applied to the court in the misappropriation action for a determination that she was "fairly and reasonably" entitled to indemnity for any expenses incurred in unsuccessfully defending the claims against her.[11]

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[10] Corporations Code section 7237, subdivision (c) provides that:

> "A corporation shall have power to indemnify any person who was or is a party . . . to any threatened, pending or completed action by or in the right of the corporation . . . against expenses actually and reasonably incurred by such person in connection with the defense or settlement of such action if such person acted in good faith, in a manner such person believed to be in the best interests of the corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. No indemnification shall be made under this subdivision:
>
> "(1) In respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation in the performance of such person's duty to the corporation, unless and only to the extent that the court in which such proceeding is or was pending shall determine upon application that, in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for the expenses which such court shall determine."

[11] Although we do not have the full record of the misappropriation action, there is no evidence that Stasz raised the issue of legal indemnification in that case. Nor is there any evidence, except in her request for a continuance, that Stasz suggested she could not defend herself without retained counsel, as she had been doing for

On appeal, Stasz contends the duty of defendants to provide her with legal indemnification was "established" by the fact that PWOA paid Kulik to settle a lawsuit relating to the legal fees incurred in representing Stasz. She is mistaken. Courts have long recognized that "a settlement does not act as an admission of liability." (*Isaacson v. California Ins. Guarantee Assn*. (1988) 44 Cal.3d 775, 794, fn. 14.) Because "a major advantage of settling is that one may terminate a lawsuit *without* admitting liability" (*ibid*.), the Evidence Code expressly provides that evidence of a settlement "is inadmissible to prove [the settling party's] liability." (Evid. Code, § 1152.) Thus, Stasz's argument that the PWOA's decision to settle the Kulik lawsuit evinces an acknowledgment of an underlying duty to indemnify her fails.

Finally, Stasz contends the trial court abused its discretion in denying her leave to amend any of her causes of action except the fraud claim. However, she fails to articulate how she could amend her complaint to address the defects in her FAC. Accordingly, she has failed to demonstrate an abuse of discretion in the trial court's denial of leave to amend.

C. *Ex Parte Application Dismissing Second Amended Complaint*

As set forth above, the trial court granted the ex parte application of the PWOA and the Voting Defendants to dismiss the SAC, including the remaining fraud claim on which the court had granted Stasz leave to amend. The court also implicitly denied Stasz's motion to reconsider. Stasz contends the court abused its discretion because she did not receive proper notice of the ex parte application and

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over a year. In any event, the appellate court determined that the request for a continuance was properly denied. (See *Park Wellington Owners' Association v. Stasz, supra*, [nonpub.opn.].)

because her SAC complied with the trial court's June 22, 2010 order. We reject both arguments.

In the absence of a statement of decision, we apply the doctrine of implied findings. (*Fladeboe v. American Isuzu Motors Inc*. (2007) 150 Cal.App.4th 42, 58 ["The doctrine of implied findings requires the appellate court to infer the trial court made all factual findings necessary to support the judgment."].) With respect to the alleged defects in notice, there was substantial evidence in the record -- attorney Crowther's and attorney Mackenzie's declarations -- to support the trial court's implied finding that Stasz was given proper notice of the ex parte application.

Moreover, even if there had been a defect in the noticing of the ex parte application, we would affirm, as the SAC did not state a cause of action for fraud against the PWOA and the Voting Defendants. The amended fraud cause of action did not allege what misrepresentations were made by the defendants, as a vote to deny legal indemnification is not a misrepresentation. Nor did the SAC allege how Stasz detrimentally and justifiably relied on those misrepresentations. (See, e.g., *Philipson & Simon v. Gulsvig* (2007) 154 Cal.App.4th 347, 363 ["'The elements which must be pleaded to plead a fraud claim are "(a) misrepresentation (false representation, concealment or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage."'"].) There was also substantial evidence in the record to support the court's implied finding that Stasz had conceded she could not amend her complaint, as the SAC is materially indistinguishable from the FAC. The SAC reiterated allegations and stated causes of actions that had already been stricken by the trial court. The amendments to the fraud cause of action merely repeated allegations found in another part of the FAC. As there were no material changes to

the SAC, the trial court did not abuse its discretion in granting the request to dismiss it.

Finally, we reject Stasz's claim of entitlement to relief under Code of Civil Procedure section 473. Under that section, a court "may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect." (§473, subd. (b).) Neither in her motion for reconsideration nor on appeal does Stasz articulate a rational basis for granting such relief. Accordingly, we find no abuse of discretion in the trial court's refusal to apply it to Stasz's failure to file a complaint containing any legally cognizable cause of action.

DISPOSITION

The judgments of dismissal and orders granting special motions to strike are affirmed. Respondents are awarded their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.